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Cape of Good Hope

Parliament

Legislative Council

Committee of the legislative
Council appointed to consider
and Report upon the Judicial Bill

Report and Proceedings



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REPORT AND PROCEEDINGS

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OF THE

COMMITTEE OF THE LEGISLATIVE COUNCIL

APPOINTED TO CONSIDER AND REPORT UPON THE

JUDICIAL BILL.



Published by order of the Legislative Council.

1863.

CAPE TOWN:

SAUL SOLOMON AND CO., STEAM PRINTING OFFICE.

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R E P O R T

OF THE

SELECT COMMITTEE appointed by the LEGISLATIVE COUNCIL on the 7th July, 1863, to whom was referred the "Bill for the better Administration of Justice, for dividing the Colony into three Judicial Divisions, and for granting Judges to the Eastern Districts."

PRESENT :

His Honour the PRESIDENT (Chairman),

Mr. Pote,

Mr. Godlonton,

Mr. Wicht,

Mr. Stein.

It was quite apparent that the session of Parliament was much too far advanced when this Select Committee was appointed to allow a reasonable hope to be entertained that any present legislation could take place upon the subject submitted to them.

Under these circumstances, the Committee did not consider it expedient critically to examine the various sections of the Bill referred to them, for the purpose of presenting it in a form which would justify its adoption by either branch of the Legislature ; but they are, at the same time, unwilling to allow the session to close without expressing an opinion upon a subject which has so long occupied public attention, and which is so intimately connected with the due administration of justice in this colony.

In the year 1845, when the territorial limits of the colony were far less extensive than they now are (there being then only half the number of circuit towns), the report of the Committee of the Legislative Council on the judicial establishments of this colony, with its voluminous and valuable minutes of evidence, clearly shows that even at that time great inconvenience was experienced by reason of the length of the circuit and the distance of Cape Town (from which all judicial processes issued) from the eastern districts of the colony.

The evils there enumerated have gradually and steadily increased, and the number of circuit towns visited by the judges have now increased to twenty-seven, whilst other districts are still putting in strong claims to be recognized as circuit towns. It is true that in the mean time some relief has been afforded to the judges by dividing the circuit into a long circuit extending to twenty-one towns, and a shorter one extending to six; but there are still so many well-grounded reasons for justifying some change in the existing system that the Committee have decided on recommending for consideration the following outline of a plan, which they believe may with advantage be adopted by future legislators:

1. An additional judge to be added to the Supreme Court.
2. One judge to be settled at Graham's Town.
3. One judge to be settled at Graaff-Reinet.
4. All the powers which belong to the Supreme Court may be exercised by the resident judge within his district, subject to appeal, as hereinafter mentioned.
5. Four criminal sessions to be held in each year at Graham's Town and Graaff-Reinet respectively, before its resident judge, as they are now held in Cape Town.
6. At least two circuits to be held annually for each of the three circuit districts into which the colony is to be divided; but the Governor may order additional circuits to be held in all or either of the three circuits, as circumstances may require it.
7. The judicial districts to be three in number, and to be called
 1. The Western Circuit.
 2. The Midland Circuit.
 3. The Eastern Circuit.

I. WESTERN CIRCUIT.

The Cape division, including the city of Cape Town

- * The division of Malmesbury.
 - * The division of Piketberg.
 - * The division of Clanwilliam.
- The division of Namaqualand.

- The division of Calvinia.
- * The division of Tulbagh.
- * The division of Worcester.
- * The division of Robertson.
- * The division of Swellendam.
- * The division of Riversdale.
- The division of Prince Albert.
- The division of Oudtshoorn.
- * The division of Mossel Bay.
- * The division of George.
- The division of the Knysna.
- The division of Bredasdorp.
- * The division of Caledon.
- The division of Stellenbosch.
- The division of the Paarl.

II. MIDLAND CIRCUIT.

- * The division of Graaff-Reinet.
- * The division of Middelburg.
- * The division of Colesberg.
- The division of Hope Town.
- The division of Richmond.
- The division of Victoria West.
- * The division of Murraysburg.
- * The division of Beaufort West.
- * The division of Fraserburg.

III. EASTERN CIRCUIT.

- * The division of Albany, including the city of Graham's Town.
- The division of Alexandria.
- * The division of Port Elizabeth.
- * The division of Uitenhage.
- The division of Humansdorp.
- * The division of Somerset.
- * The division of Bedford.
- * The division of Cradock.
- * The division of Burghersdorp.
- * The division of Aliwal North.
- * The division of Queen's Town.
- The division of Stockenström.

- * The division of Alice.
- * The division of Fort Beaufort.
The division of Peddie.
The division of Bathurst.

(* These show where circuit courts are now held.)

8. The present high sheriff to continue to hold that office, but his responsibilities and duties to cease as far as they belong and attach to the midland and Eastern districts.

A sheriff to be appointed for the midland districts, who shall appoint the deputies within the districts, issue process, and be subject to the same responsibilities and duties therein as the high sheriff now is.

In like manner, and subject to the same obligations, a sheriff to be appointed for the eastern districts.

9. Any judge of the Supreme Court may be requested by the Governor to take either of the three circuits.
10. The judges in the eastern and midland districts to be changed every two years, They shall then proceed to Cape Town and their places be taken by the other puisne judges in rotation.
11. The eastern and midland judges may respectively state a case in any matter civil or criminal brought before him for the opinion of the Supreme Court.
12. Parties to suits before the districts courts may appeal to the Supreme Court, under rules to be prescribed.

The above suggestions appear to the Committee, on the one hand, to preserve and maintain the authority of the Supreme Court of the colony which will be left to exercise a jurisdiction as extensive as the limits of the whole colony; whilst, on the other, two of the principal towns in the eastern parts of the colony will possess a judge of the Supreme Court, who will be resident there for a limited period. It will be seen that if the proposed system be adopted, the rotation of the hereafter to be appointed puisne judges of the Supreme Court would be such that each of them would be resident four years in the two district courts at Graham's Town and Graaff-Reinet, and four years at the seat of the central tribunal in Cape Town;

whereby, with the assistance of a well-arranged system of appeals, it is to be hoped that the growth of conflicting systems of law and judicial practice in adjacent districts would be effectually prevented.

The great advantage will also be attained of holding four quarterly criminal sessions at Graham's Town and Graaff-Reinet, and thus all the gaols within a reasonable distance of those towns would be cleared four times a year, as is now the practice in Cape Town.

* It is also to be observed that although all the judges of the Supreme Court would have jurisdiction to travel either of the three circuits, it is probable that, in the ordinary course, the judges resident in the eastern and midland districts would usually travel the circuit comprising the divisions within their own districts. This arrangement would, it is presumed, greatly diminish the expenses which are now necessarily incurred by the judges on the present long circuit, who take their departure from and have to return to the seat of the Supreme Court at Cape Town.

WM. HODGES, Chief Justice, Chairman.

Committee-rooms, 27th July, 1863.

PROCEEDINGS OF COMMITTEE.

Thursday, 9th July, 1863.

PRESENT :

His Honour the President,	Mr. Wood,
Mr. de Wet,	Mr. Wicht,
Mr. Godlonton,	Mr. Pote.

Resolved that His Honour the President do take the chair.

Order of Council, dated 7th July, for appointment of committee, read.

Committee in discussion on the Bill "For the better administration of Justice, for dividing the Colony into three Judicial Divisions, and for granting Judges to the Eastern Districts."

After discussion,

Resolved, on motion by Mr. Wood: That the Bill be referred to a sub-committee, consisting of His Honour the President and Mr. de Wet, for consideration and report to another meeting of this committee.

Whereupon committee adjourns *sine die*.

Saturday, 25th July, 1863.

PRESENT :

His Honour the PRESIDENT (Chairman),

Mr. Pote,	Mr. Wicht,
Mr. Stein,	Mr. de Wet.

The Chairman, on behalf of the sub-committee appointed at the last meeting, submits certain "suggestions" which are read.

Mr. Wicht moves that these "suggestions," be adopted.

Agreed to, and further resolved that the chairman draw up a report embodying them.

Committee adjourns to Monday next, the 27th instant, at 12 o'clock.

Monday, 27th July, 1863.

PRESENT:

His Honour the PRESIDENT (Chairman),

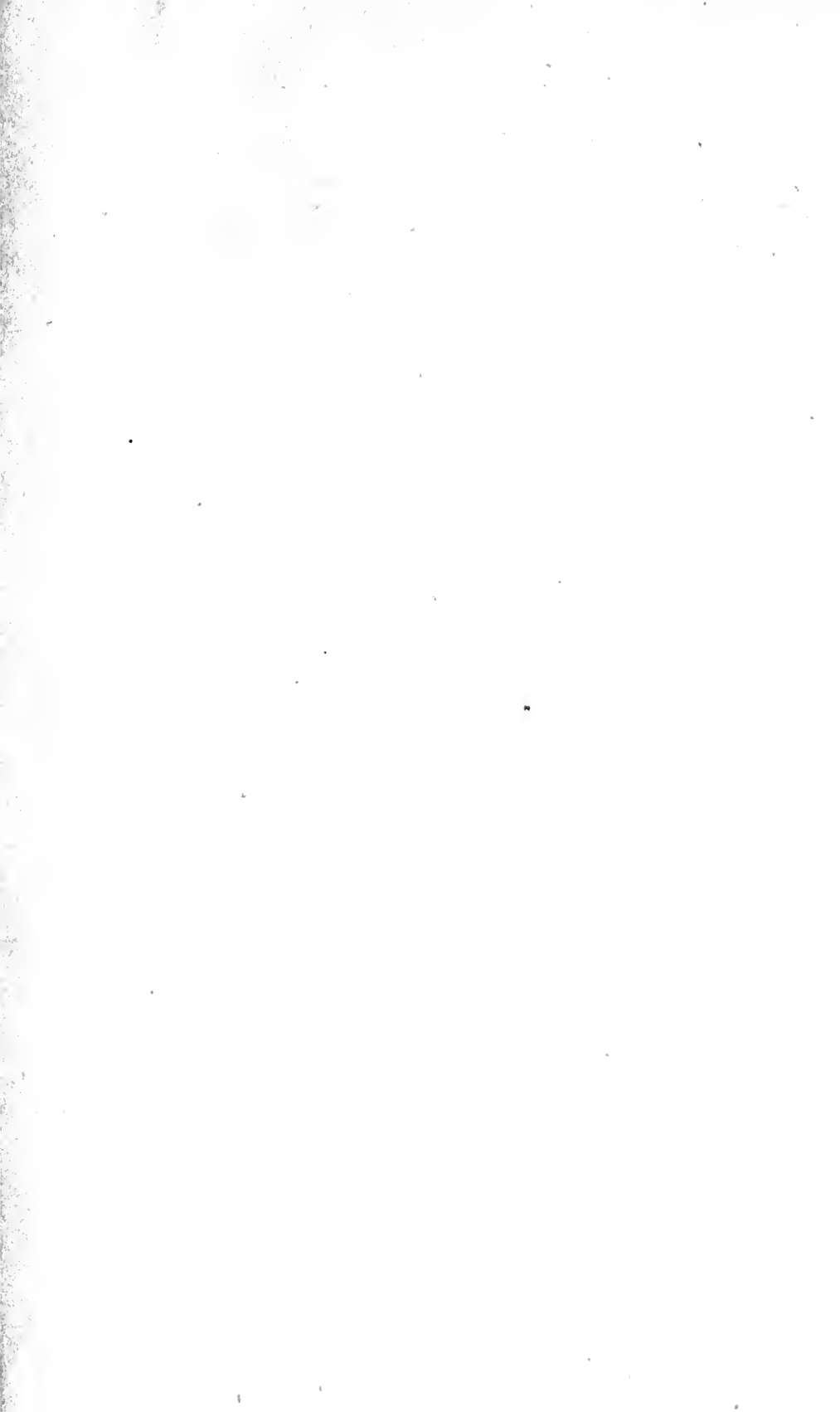
Mr. Pote,
Mr. Stein,
Mr. Godlonton,

Mr. Wicht.

The Chairman submits, and reads, draft report.

Mr. Pote moves its adoption.

Agreed to, and the chairman instructed to report to Council accordingly.



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